



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

June 8, 1993

Mr. Gary Compton
Chairman of the Board
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

Letter Opinion No. 93-46

Re: Whether article VII, section 9 of the Texas Constitution grants the Parrie Haynes Ranch, which was willed "to the State Orphan Home of Texas to help orphan children," to the asylum fund established by that constitutional provision (RQ-432)

Dear Mr. Compton:

You ask whether real property known as the Parrie Haynes Ranch should be held by the Texas Youth Commission ("TYC") or should be placed in the fund created by article VII, section 9 of the Texas Constitution. You state as follows:

Since February 27, 1962, when the Texas Youth Commission ("TYC") received via executor's distribution deed the residuary of Parrie Haynes' estate, TYC has held said property, which includes the 4, 425 acre Parrie Haynes Ranch, as an income producing corpus and used the income to aid orphan beneficiaries who are wards of TYC.

The codicil to the will of Parrie Haynes provides, "The remainder of my estate shall go to the State Orphan Home of Texas to help orphan children."

The Texas Youth Commission believes that the codicil created a charitable trust for the benefit of orphans with the State Orphans Home of Texas¹ as trustee. You state that the General Land Office maintains that the codicil creates an outright bequest to the Asylum Fund created by article VII, section 9 of the Texas Constitution. You request advice that would assist the parties in resolving this dispute.

An opinion of this office cannot construe a will. In construing a will, a court seeks to determine the testator's intention as expressed in the document, but it may receive

¹You inform us that the State Orphans Home is now the Corsicana Residential Treatment Center, a facility of the Texas Youth Commission. See also *Haynes v. Henderson*, 345 S.W.2d 857, 859 (Tex. Civ. App.—Austin 1961, writ ref'd n.r.e.).

extrinsic evidence to assist it in determining the sense in which the words were used by the testator. *Stewart v. Selder*, 473 S.W.2d 3, 7 (Tex. 1971). The court may receive and consider evidence concerning the situation of the testator, the circumstances existing when the will was executed, and other material facts that will enable the court to place itself in the testator's position at that time. *Id.* For example, in an action by Mrs. Haynes' heirs to construe the will and codicil in issue here, the court referred to the facts that Mrs. Haynes had no children, that she was thoroughly familiar with her property and active in managing it, and that the will was prepared by an experienced lawyer. *Haynes v. Henderson*, 345 S.W.2d 857.² An attorney general opinion addresses a question of law, and it cannot investigate or evaluate evidence that may be relevant to the intent expressed in a will.³ We can, however, address a legal question raised in the arguments of the General Land Office: whether article VII, section 9 of the Texas Constitution, which established the asylum fund, requires property willed to the state for the benefit of orphan children to be placed in the asylum fund.

Article VII, section 9 of the Texas Constitution provides as follows:

All lands heretofore granted for the benefit of the Lunatic, Blind, Deaf and Dumb, and Orphan Asylums, together with such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said Asylums. And the Legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in Section 4 of this Article.

A brief from the General Land Office suggests that Attorney General Opinion MW-18 (1979) supports its conclusion that the Parrie Haynes bequest should go into the constitutional asylum fund. Attorney General Opinion MW-18 concluded that land devised to the state without designation of a specific state agency or a specific purpose became part of the permanent school fund of Texas established pursuant to article VII,

²In *Haynes v. Henderson*, the court affirmed a district court judgment holding that the residue of Mrs. Haynes' estate vested in the Texas Youth Council for the use and benefit of the Corsicana State Home. This decision did not, however, address the question raised by the General Land Office. In 1977 a Travis County district court determined that the TYC, as trustee, could lease the Haynes ranch to TYC as state agency, without violating the Texas Trust Act. *In re: Testamentary trust created by the will of Mrs. Parrie Haynes*, No. 255, 295 (53rd Dist. Ct., Travis County, Tex., Aug. 5, 1977). The unpublished opinion repeatedly refers to the Texas Youth Council as the trustee of the testamentary trust, but the opinion was premised on the assumption that TYC was the trustee. The question that TYC raises in this opinion request was not litigated.

³We are similarly unable to resolve questions raised by the General Land Office about the effectiveness of the executor's deed by which the residue of Mrs. Haynes' estate was conveyed.

sections 2 through 5.⁴ As a corollary, argues the General Land Office, property devised to the state for a particular purpose becomes part of the constitutional fund established for that purpose.

Attorney General Opinion MW-18 relied for its conclusion on the legislative intent found in statutes that placed in the permanent school fund public lands acquired by the state in various ways. Educ. Code § 15.01 (unappropriated public domain, including land recovered by state); Nat. Res. Code § 33.057 (gifts of interest in land to School Land Board); Property Code § 71.202 (escheated lands) (formerly codified as V.T.C.S. article 3281 (1925)). The opinion is consistent with the well-established rule that power with respect to state property rights is vested in the legislature, to be exercised by the enactment of statutes. *Conley v. Daughters of Republic*, 156 S.W. 197 (Tex. 1913); *King v. Sheppard*, 157 S.W.2d 682 (Tex. Civ. App.--Austin 1941, writ ref'd w.o.m.). The conclusion of MW-18 is based on legislative enactments showing that the legislature intended the bequest of land to go into the permanent school fund, and not on the theory that article VII, section 4 itself placed the land in the fund.

On surveying the provisions relating to the constitutional asylum fund we have not found any statute comparable to those cited in Attorney General Opinion MW-18. The four "asylums" referred to in article VII, section 9, were established by an 1856 statute that gave each institution an endowment of 100,000 acres⁵ of public land. Acts 1856, 6th Leg., ch. 146, at 76; 4 Gammel's Laws of Texas 494.⁶ Provisions of the Natural Resources Code recognize the 1856 land grant and provide for sale and lease of the lands. Nat. Res. Code § 11.042; *id.* ch. 51. We have found no legislation placing additional land in the asylum fund.

⁴Article VII, section 2 of the Texas Constitution established a public school fund consisting of one half of the public domain of the state and certain other funds, lands and property. Article VII, section 4 of the Texas Constitution provides for the sale of the lands set apart to the public school fund and for the investment of proceeds of the sale. Article VII, section 5 establishes the permanent school fund from the proceeds of the sale of lands set apart to the public school fund.

⁵The surveys for these endowments actually included 410,693 acres of land. Tex. Const. art. VII, § 9, interp. commentary (Vernon 1955).

⁶The funds were accorded constitutional protection by the Texas Constitution of 1866, which stated in part:

The four hundred thousand acres of land that have been surveyed and set apart, under the provisions of a law approved 30th August, A.D. 1856, for the benefit of . . . [the four "asylums"] shall constitute a fund for the support of such institutions, one-fourth part for each; and the said fund shall never be diverted to any other purpose. . . .

Tex. Const. art. X, § 11 (1866). No similar provision appeared in the Texas Constitution of 1869, but the present constitution, adopted in 1876, includes article VII, section 9.

We have also considered and rejected the argument that article VII, section 9 itself requires that land willed to one of the four asylums be placed in the constitutional asylum fund. The constitutionally-established fund sets aside

[a]ll lands heretofore granted for the benefit of . . . [the four asylums], together with *such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants*

Tex. Const. art. VII, § 9 (emphasis added).

The reference to "donations" might suggest that article VII, section 9 provides that private donations to the enumerated state institutions are part of the constitutional fund. *See* WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 375 (1983) ("donation" is a gift, especially to a charitable or public institution). The term "donations" in article VII, section 9, is actually just a synonym for "grants" of public land. *See* OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("donate" and "donation" defined as "grant"). Former article XIV, section 6 of the Texas Constitution used "donated" to mean "granted":

To every head of a family without a homestead *there shall be donated one hundred and sixty acres of public land*

Tex. Const. art. XIV, § 6 (1876) (repealed 1969) (emphasis added). Thus, in addition to the 1856 land grants, article VII, section 9, places in the asylum fund any other grants of land that might be made to the specific asylum or asylums "indicated in the . . . grants."⁷ The language of this constitutional provision does not refer to bequests of land from private individuals to a state institution. Nor has the legislature interpreted article VII, section 9, as requiring all land allocated to the Texas Youth Commission for the benefit of its Corsicana facility to be placed in the constitutional fund. *See* Acts 1961, 57th Leg., ch. 33, §§ 1, 2, at 49-50 (Texas Youth Council authorized to exchange a specific tract of land used by Corsicana State Home for specific land owned by Corsicana Independent School District). We conclude that article VII, section 9 of the Texas Constitution does not require the Parrie Haynes Ranch, which was willed to the State Orphans Home for the benefit of orphan children, to be placed in the asylum fund established by that provision.

⁷It does not appear that any land in addition to the 1856 grants was ever allocated to any of the asylum funds. The lands were all sold by 1912. Tex. Const. art. VII, § 9, interp. commentary (Vernon 1955). As of 1978, the only land held by the funds consisted of 160 acres returned to the state in 1941 for delinquent payments. State Auditor, Audit Report Permanent and Available Funds of the Blind, Deaf and Dumb, Lunatic, and Orphan Asylums 2 (August 29, 1978).

S U M M A R Y

Article VII, section 9 of the Texas Constitution does not require the Parrie Haynes Ranch, property willed to the State Orphans Home for the benefit of orphan children, to be placed in the asylum fund established by that provision.

Very truly yours,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General